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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re M.C. et al., Persons Coming Under  
the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

S.D.,

Defendant and Appellant.

G042420

(Super. Ct. Nos. DP018641,  
DP018642)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Caryl A. Lee,  
Judge. Affirmed.

Brent Riggs, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Nicholas S. Chrisos, County Counsel, and Karen L. Christensen, Deputy  
County Counsel, for Plaintiff and Respondent.

Leslie A. Barry, under appointment by the Court of Appeal, for the Minors.

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S.D. (the mother) appeals from the jurisdictional and dispositional orders of the juvenile court, which removed teenagers Monique and M. (collectively the girls or the children) from her custody. The petition under Welfare and Institutions Code section 300, subdivision (b),<sup>1</sup> alleged failure to protect, primarily due to the mother's ongoing and untreated alcohol abuse. The mother argues the petition lacked sufficient facts to support jurisdiction and that substantial evidence did not support the court's dispositional orders. We disagree and affirm.

## I FACTS

### *Detention*

M., now age 16, and Monique, now age 15, were detained in June 2009 after the police were called to the family's residence after receiving a call about a disturbance.<sup>2</sup> Upon their arrival, the responding officers heard yelling coming from inside. They discovered sanitary problems upon entering, including dirty dishes, unrefrigerated perishable items, and dirty laundry scattered throughout the residence. The mother was intoxicated, with a preliminary test showing a blood-alcohol level of .16. Based on the mother's intoxicated condition and the condition of the home, as well as the girls' statements, they were taken into emergency protective custody.

Prior to the detention hearing, reports were prepared by the Orange County Social Services Agency (SSA) detailing their investigation. A records check revealed that the mother had been convicted of misdemeanor driving under the influence in 2008

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<sup>1</sup> Subsequent statutory references are to the Welfare and Institutions Code.

<sup>2</sup> The father was deceased. The parents' other child, Max, was 17 at the time of detention and had been adjudicated a ward under section 602 for burglary and possession of marijuana and methamphetamine.

and been sentenced to 15 days in jail and three years' probation.<sup>3</sup> The children had also been the subject of five child abuse reports between 2002 and 2007. The allegations mostly concerned the mother's failure to protect due to alcohol abuse and anger management problems.

Loretta Hernandez-Lopez, a social worker, visited the mother after detention.<sup>4</sup> She once again found the home cluttered, with a foul smell coming from the refrigerator, dirty dishes, and laundry. The mother stated she had moved into the apartment six months ago and had not unpacked completely. When Hernandez-Lopez informed the mother about the investigation, the mother said that everyone was against her and that she was victimized everywhere she went. Each time Hernandez-Lopez asked the mother a question, she would ramble on about something else.

Hernandez-Lopez asked the mother if she was intoxicated, and the mother became upset, denied it, and stated that she had only "had maybe 1, 2, maybe 3 or 4 glasses of Champagne." She stated that she was stressed due to M.'s graduation from middle school. She said the girls had good grades, however, they had been staying out late recently, and that their room was messy and clothes were dirty because they did not want to do the laundry. She said the girls were involved in prostitution, and she would "not allow that to shame her house." She claimed the neighbors were conspiring against her.

When asked about the night the girls were detained, the mother reported a misunderstanding as to the girls' whereabouts, and said that when they came home, she

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<sup>3</sup> The mother had a criminal history that went back to 1980 under 13 aliases. Her history included arrests for forging a name on a credit card, battery, theft of personal property, and a 2007 arrest for driving under the influence.

<sup>4</sup> In her reply brief, the mother appears to argue that the detention report was "not in evidence" and therefore could not be considered. She ignores, however, that the jurisdiction report was admitted into evidence, and the pertinent parts of the detention report were copied nearly verbatim into the jurisdiction report.

sent them to their room. She denied any yelling or throwing of objects. She denied being drunk or taking a breathalyzer test, accusing the neighbors of making this up. When Hernandez-Lopez attempted to ask the mother about the history of child welfare reports, the mother denied any wrongdoing and claimed she had been victimized by the system and discriminated against because of her national origin.<sup>5</sup> Hernandez-Lopez found questioning the mother difficult, because of her tendency to go off on a tangent rather than answering the questions as asked.

Hernandez-Lopez also interviewed M. and Monique. She noted the children appeared to be in good health with no developmental delays. They stated that life with their mother is very difficult because of her mental health issues. Although she had never been properly diagnosed, because she had never sought help, M. thought the mother might be bipolar, because she had terrible mood swings, happy one moment and “completely terrible” another. They reported that when the mother gets upset, she calls them prostitutes and kicks them out of the house. The girls reported this happens on a regular basis, and on those occasions they have left and would walk for hours before coming home and sneaking into their bedrooms to get some sleep. They stated that their brother Max had similarly been kicked out of the house, at times for days.

On the night they were detained, Monique said that when they came home, the mother was upset and very drunk, and began to yell and throw things at them. The mother called them prostitutes and they tried to ignore it, but the mother kept coming in and out of their bedroom, yelling and throwing things at them. When the police arrived, the mother told them to be quiet and the police would go away. On that night, they did not feel safe because of their mother’s behavior.

M. told the social worker that they do not sleep well because of their mother’s behavior and their grades have suffered as a result. They also have trouble

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<sup>5</sup> The mother was born in Iran in 1959. She moved to the United States when she was 17.

doing their school work at home. Monique said the mother drinks every day, buying whatever she can afford at the time. Monique also said that the mother would become upset when the girls tried to clean the house, and the mother would sometimes throw objects at them, causing marks and bruises.

One day when driving the girls to school, the mother became upset with Monique and pulled her hair. Monique got out of the car, and the mother, upset, began driving erratically, almost running her over in an attempt to get her back in the car. Someone reported this to the school and a social worker came out at the time, but nothing happened. Monique expressed doubt that anyone could help them. Monique said that she loves her mother, but she is afraid of going home because the mother would not seek out any help.

At the time of the initial detention hearing, neither of the girls wished to be in the courtroom with their mother. On June 24, the girls were detained, and the court ordered monitored visits with the mother.

### *Jurisdiction/Disposition*

Prior to the jurisdiction/disposition hearing, the girls and the mother were interviewed in early July by Julie Nguyen, senior social worker. The girls' views seemed to have altered somewhat. M. told Nguyen that she liked the freedom of living with her family, although she did not like the arguments and the lack of trust from the mother. She expressed a desire for stability, being able to live in the same place and go to the same school. M. denied being kicked out of the house by the mother, instead saying that when she felt the need for a break from stress, she would walk for an hour. She also denied the mother threw objects at them, but said the mother has thrown shoes, a remote control, and a book, and if the objects were coming in her direction, she would dodge them. M. does not feel comfortable being with the mother when she is drunk, but did not

ask to be taken away. She denied sleep problems due to her mother's behavior, and claimed the mother would only drink and drive in an emergency.

During Monique's interview, the mother made an unapproved telephone call to Monique and left a message in which she discussed the case.<sup>6</sup> Monique admitted talking to the mother without monitoring sometimes. Monique also likes the freedom of living with her mother. Like her sister, she backtracked on some of her previous statements, and asked several times whether the mother would be able to read what she said, because she did not want the mother to be upset with her. Monique said the mother would sometimes tell her and M. to "get out," but they knew she did not really mean it. She did admit that the mother had called them prostitutes. She denied having to leave the house for extended periods. She felt her mother drank more than she should, sometimes during breakfast, lunch and dinner. When drunk, she would yell and accuse her and M. of being prostitutes. Monique said she felt safe at home, but uncomfortable, agitated and annoyed.

The mother was also interviewed. She blamed any problems with the apartment on a sewage problem. She did not believe the results of the alcohol test on the day the detention occurred, claiming she only drank two to three glasses of wine. She also stated she was cooperative with the police. She denied having an alcohol abuse problem, stating she drank only two or three glasses of wine occasionally. She denied driving while intoxicated or calling either girl a prostitute.

Later in July, Nguyen left a message for the mother with instructions on her drug testing referral. Mother later claimed she had not gotten the message because her phone had not been working, and said she did not have the time or the need to do as she

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<sup>6</sup> This was not the only such call. On June 30, the mother had called the girls at their foster home and was overheard to say that they had to make up their minds to either go home or stay in foster care for life.

was asked, because Nguyen had not presented all the facts to the court. Nguyen later learned the mother's July 31 drug test was considered positive.

At trial, Nguyen testified generally about the contents of the reports. She also testified that the mother had completed a driving under the influence program, and some group and individual counseling and alcohol education. From her personal observation, she had seen the mother's mood swings, with conversations starting out congenially and turning confrontational. Nguyen recommended that the children not be returned to their mother's care because of the ongoing alcohol problem, her mental health issues, and her need to improve her relationship and communication with the children. She recommended both individual and joint counseling with the children. The children had told her that they love their mother and wish to return to her in the future, but they had also said they believed the mother needs treatment before they return.

Monique and M. also testified outside their mother's presence. Monique testified that the mother said "gross stuff" when she gets mad, which happened frequently. She testified that she sees her mother drink every day and get drunk, and when she does she tends to yell at the girls. She testified about the incident in the car in which the mother pulled her hair, and the disruption caused by attending different schools. When the mother is drunk, as she was on the night she and M. were detained, she feels safe because she knows "how to handle the situation." Both she and M. have asked the mother to stop drinking, but when confronted, the mother avoids the issue or denies she has a problem. With respect to whether she has ever been kicked out of the house, she said she has not, and denied she told the social worker she did not feel safe at home. She loves her mother and would like to live with her again "at some point." She said she believed the mother has a drinking problem and needs to stop drinking, and was not sure if she should return to her mother's care at the present time.

M. also testified that she has seen her mother drunk on a number of occasions. When drunk, the mother would throw things, but not at the girls. She also

yells and would call the girls inappropriate names. Like Monique, she denied being kicked out of the house, but she did testify that when the mother gets upset, the mother would tell them she “can’t stand [them] . . . right now” and they would leave the house for a couple of hours while the mother calms down. She denied telling the social worker that the mother drinks wine every day or gets drunk once a week, but she agreed that the mother drinks often. She testified that she feels safe at home, although she does not like living with the mother when she is drinking, and would like to return to the mother sooner rather than later. She does not like how the mother treats her when she is drunk and would prefer it if the mother never drank at all. She would like to be returned to the mother on a conditional basis if the mother got the help that she needs.

Pursuant to a stipulation of all parties, the mother made a lengthy statement to the court explaining her side of the situation. She mentioned the sewage problem and discussed her problems with a neighbor and the landlord. She denied hitting Monique’s head during the incident in the car, and denied calling either girl a prostitute. She drank, but was not an alcoholic. She had attended classes, including Alcoholics Anonymous meetings, where she did not belong. She complained that SSA’s reports included lies and stated she had called Sacramento and complained about it.

The court ruled after hearing all the evidence. The court found the mother had never accepted any responsibility for her situation, as evidenced by her statement to the court. While acknowledging the existence of stressors, the court noted it did not give the mother the right to drink excessively or to use alcohol to the extent that her children were affected by it. The court found the girls to be insightful with respect to the effects of alcohol, as well as smart and “parentified,” meaning that they act like the parent in the home. The court found that the mother drank too much and it affected the children and that the mother had anger and impulse control problems. Without any change to the situation that led to detention, the court did not feel the children could be returned. With counsel’s input, the court amended and sustained the petition with the appropriate



findings, and the children were removed with reunification services ordered. The mother now appeals.

## II

### DISCUSSION

The court's jurisdictional and dispositional findings will be upheld on appeal if supported by substantial evidence. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) "We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. Rather, we draw all reasonable inferences in support of the findings, view the record most favorably to the juvenile court's order, and affirm the order even if other evidence supports a contrary conclusion. [Citation.] The appellant has the burden of showing the finding or order is not supported by substantial evidence. [Citation.]" (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251.)

#### *Jurisdiction*

A preponderance of the evidence must show that "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse." (§ 300, subd. (b).) "The statutory definition consists of three elements: (1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) 'serious physical harm or illness' to the minor, or a 'substantial risk' of such harm or illness." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

The mother first argues the court lacked the requisite substantial evidence to support jurisdiction under section 300, subdivision (b). She seems to argue that this court must interpret section 300, subdivision (b)'s language regarding "serious physical harm" as equivalent to the threat of imminent death. In doing so, she relies on cases

outside dependency law. We reject this contention. Serious physical harm like the phrase great bodily injury, is not a term of legal art. (See *In re Mariah T.* (2008) 159 Cal.App.4th 428, 437.) Nothing in dependency law supports the mother's contention that a risk of imminent death is necessary to establish a substantial risk of serious physical harm. "Although there may be an 'I know it when I see it' component to this factual determination, as with the term 'great bodily injury' we believe that parents of common intelligence can discern what injuries fall within its reach. [Citation.]" (*Id.* at p. 438.) Such injuries would certainly include the risk, for example, of being hit in the head by a flying household object, or being hit by a car driven erratically.

The mother then attempts to parse the allegations of the petition one by one in an attempt to show there was no substantial risk of serious harm sufficient to support jurisdiction. It is not the particulars of the precise language in each allegation that is important, but the substance of the allegations found true by the trial court. (*In re Jessica C.* (2001) 93 Cal.App.4th 1027, 1037-1038.) The overall substance of the allegations was the mother's persistent and untreated alcohol abuse and a refusal to acknowledge that her alcohol use was a problem. As noted above, while intoxicated, the mother would sometimes have mood swings, and throw objects at the children and call them names. She also became physically violent on occasion, including an incident in which the mother pulled Monique's hair while in the car and drove erratically. She also had an arrest for driving under the influence. At times, the children have, at a minimum, left the house due to their mother's behavior.

While her daughters are, as the mother points out, teenagers and not small children, they are nonetheless at a serious risk of harm from the mother's "anger impulse control issues" and other behavior stemming from her continued and unresolved alcohol abuse. All of the incidents discussed above — throwing objects, pulling Monique's hair, driving while intoxicated, and forcing the children to leave the house — support this conclusion. The overall picture presented here is one of denial and a continuing refusal

to accept responsibility for the impact the mother's behavior has on her children, including their physical well-being. Given the facts as a whole, there was substantial evidence from which the court could conclude a serious risk of harm existed. We thus find no error as to jurisdiction.

### *Disposition Orders*

The mother next argues there was insufficient evidence to support the court's dispositional findings. To justify removal from the parent's custody, the juvenile court must find by clear and convincing evidence that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody." (§ 361, subd. (c)(1).) We review orders of removal to determine if they were supported by substantial evidence. (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 193.)

For many of the same reasons discussed above, there was substantial evidence from which the court could conclude that the mother's continued alcohol abuse was a "substantial danger" to her daughters' physical health, emotional well-being, and safety within the meaning of the statute. Most importantly, the mother's alcohol problem remained untreated, and she continued to deny its existence and impact on her children even after detention. Without acknowledging her alcohol abuse and taking at least beginning steps to address it, there was no hope of change. Instead, the mother continued to blame her problems on everything except alcohol abuse. While this behavior continues, there is no hope at all that the mother can provide her daughters with a safe and stable home, for the same reasons her behavior created a substantial risk of physical harm. (See *Jurisdiction*, *ante*.)

The mother's contention that "strict supervision with family maintenance services" were an appropriate alternative is vaguely absurd in light of her continued refusal to acknowledge the existence of an alcohol abuse problem. We also reject the mother's suggestion that because the girls were teenagers and had managed to deal with their mother's alcohol abuse thus far, they could continue to do so in the future without risk. The mother's continued and untreated alcohol abuse created a substantial risk to her daughters within the meaning of the statute. We thus find the court's orders appropriate and supported by substantial evidence.

### III

#### DISPOSITION

The court's orders are affirmed.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

O'LEARY, J.